IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.387 OF 1993.

Gopal Ramchandra @ Rambhau
Shivgan, since deceased through
his legal heirs & representatives
1(a) Smt.Akabai Gopal Shivgan
and Anr. : Appellants.

versus

Jaysingrao Amritrao Desai
& ors. : Respondents.

Mr.D.S.Sawant for the appellants.
Mrs.S.A.Mudbidri for Respondent Nos. 1 and 2.

CORAM : D.G.DESHPANDE,J.

DATED : 10th January 2005.

ORAL ORDER

1. Heard advocates for the appellants and

respondent Nos.1 and 2. The appellants now before this Court in this Appeal are the legal heirs and representatives of deceased Gopal Shivgan who had filed this appeal to the limited extent and challenged the findings of the court to deduct Rs.76800/- from his total earning of Rs.200/- per month i.e. Rs.2400/- per year i.e. Rs.76,800/- for 32 years.

2. Original appellant Gopal suffered from a motor accident as a result of which he was suffering from paraplegia i.e. his body below the chest was totally paralysed. There was no dispute about his suffering from the accident to such an extent. No cross or counter appeal has been filed by any of the respondents to challenge the findings of the Motor Accident Claims Tribunal in that regard. While determining the compensation to which the appellant was entitled the Tribunal considered that the original appellant Gopal [- now deceased and, therefore, hereinafter referred to as "the Deceased"] was working as seasonal operator. He was getting monthly salary of Rs.768.58 and he was working as seasonal permanent countrifugal operator. However, out of the 12 months period, the working

period was 5 months and off season was for 7 months. During off season period the deceased was used to get 11 per cent of his salary. The tribunal made following calculations :-

Rs.768.58 X 5 months = Rs.3842.90 and
11% of this amount i.e. Rs.768.58 comes to Rs.84.
And therefore, Rs.84 X 7 months = Rs.588/-.
Hence deceased Gopal would have got Rs.3842 + Rs.588 = Rs.4430/- from his service.

The tribunal applied multiplier of 32 years looking to the circumstances of the case. Since there is no counter appeal or cross, both the findings of the tribunal are required to be upheld regarding multiplier.

3. However, while making total calculations of the income the tribunal deducted Rs.200/- per month which the deceased Gopal might have spent for himself, Counsel for the appellants contended that if the deceased Gopal was actually working for five months and earning Rs.768.58 per month during that period then deducting Rs.200/- per month for five months is justified but if the deceased Gopal was working as off season operator

and was getting Rs.84/- per month then deducting Rs.200/- per month for seven months in a year and like that for 32 years was completely wrong and unjustified. Because whatever amount a man would spend for himself would depend upon his earning. When deceased Gopal was getting full salary of Rs.768.58 per month then his spending Rs.200/- per month for himself is justified. But, from the admitted facts, when deceased Gopal was getting Rs.84/- per month for 7 months in a year, then it was totally wrong on the part of the tribunal to hold that during 7 seven months period also he was spending Rs.200/- per month for himself.

4. Counsel for the appellants contended that deduction of amount by the tribunal of Rs.76800/- on that count is totally wrong.

5. Para 27 of the impugned order of the tribunal is as under :-

> "The Petitioner Gopal Shivgan would have got Rs.4430 per annum multiplied by 32 years comes to Rs.1,41,760 per annum. Rs.1,41,760 - Rs.76,800 come to

> Rs.64,960. Thus the dependency of the wife and the son of the Petitioner would be this much. They have lost this much of income because of said accident and the accidental injuries which were caused by rash and negligent driving of Opponent No.2 who was driving the truck belonging to Opponent No.1."

The tribunal has granted Rs.64,960/- towards the compensation after deducting Rs.76,800/- which deceased Gopal might have spent for himself at Rs.200/- per month i.e. Rs.200 x 12 x 32 = Rs.76,800/-. This calculation is wrong. Deduction of Rs.200/- per month for 7 months in a year where the deceased Gopal was working as off seasonal operator is wrong and, therefore, if the calculation in that regard is made it comes to Rs.200 x 7 x 32 = Rs.44,800/-. It is true that deceased Gopal might have spent 1/3rd of his income i.e. 1/3rd of Rs.84 per month. But looking to the injuries suffered by him, making those minute calculations for giving the benefit to the respondents was not to be justified in the circumstances of the case. Therefore, the claim

of the appellants to get Rs.44,800/- in addition to the amount granted by the tribunal is required to be allowed. The counsel for the appellants pointed out that as per the final order instead of Rs.1,22,960/- it should be Rs.1,49,960/- and that has been corrected by the tribunal on page 19 of the paper book. I therefore pass the following order :-

:ORDER:

The appeal is partly allowed.

The appellants are entitled to get compensation of Rs.1,49,960 + Rs.44,800 = Rs.1,94,760/- with no order as to costs.

[D.G.DESHPANDE]

10/01/2005 JUDGE.